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File No. O. Karnatak University/52

706-H

12

CONTENTS.

Legal Department File No. G.Karnatak University/52.

Sr.No.	R.I. / C.No.	Subject.	Page.
		Opinions under the Karnatak University Act, 1949.	
1	<u>5348</u> Date 52.	Sec. 23, 56 and 60 Election of Dean by the faculty of Arts challenging the election of Principal B.B. Jadhav.	1-5.

Office of the R.L.A.

Election of Dean
by the Faculty
of Arts.

Karnatak
University Act,
1949.

Section 23, 25
and 60
and
Status 149.

A representation has been made to His Excellency the Governor of Bombay by 25 members of the Senate of the Karnatak University wherein they have challenged the election of Principal G.B. Jathar as Dean of the Faculty of Arts, the reason advanced being that the ballot papers which were used at the election and their counterfoils were indentionally numbered in contravention of the University Statutes framed in this behalf and that the secrecy of the ballot was thereby violated. It is, therefore, urged that Principal G.B. Jathar was not validly elected and the Chancellor is requested to give his ruling on the points raised in the representation. The Vice-Chancellor whose report has been called for does not agree that there was a violation of the Statutes relating to the election inasmuch as they do not require the election for the Post of the Dean to be held by ballot. He also points out that this representation which has been submitted by the members of the Senate direct to the Chancellor is not in accordance with the provisions of section 60 of the Karnatak University Act, 1949, which, he contends, requires the representation to be submitted through the proper channel, i.e. Vice-Chancellor. In view of these rival contentions the papers have been referred to the R.L.A. with the request to advise on the following two points, namely :-

- (1) Whether the identical numbering of the voting papers and their counterfoils violates the provisions of the University Statutes and
- (2) whether the interpretation put by the Vice-Chancellor on section 60 of the Karnatak University Act, 1949, is correct.

2. The view taken by the Vice-Chancellor on the first point namely, that the election for the post of the Dean of a faculty is not required to be held by ballot is

ballot is correct, Section 23(1) of the Karnatak University Act, 1949, enacts that there shall be elected by the Faculty from amongst its members and that the term of office of a Dean shall be such as may be determined by the Statutes. This provision does not lay down in specific terms that the election should be held by ballot. Section 36 which is referred to in the representation has no application as its operation is restricted to the election to the Senate, the Syndicate and the Academic Council. Further, as pointed out by the Vice-Chancellor, Statute 149(b) also does not apply to the election of a Dean by a Faculty but it applies only to an election to an authority or office by another authority. In the present case, the election to the office of the Dean was not by another authority but by the same authority but by the same authority in the circumstances, it was not legally necessary to hold the election by ballot. Even assuming that Statute 149(3) governs the election of a Dean the contention of the Senators that there was a violation of the secrecy of the ballot is not correct for the following reasons and the other points raised by them do not, therefore survive. One of their contentions is that the ballot paper did not conform to the form prescribed by Statute 116. This contention is not correct because the form used conforms in material particulars to the form prescribed and the provisions of Statute 116 are substantially unobjectionable complied with. The next contention is that the identical numbering of the voting papers and their counterfoils was opposed to the secrecy of the ballot. This contention too is not well supported in law and practice. Numbering of ballot papers is well-settled practice and such numbering is in vogue in all elections. As pointed out by the Vice-Chancellor the secrecy of the ballot was well guarded and the contention of the Senators that an unscrupulous Registrar may be able to unearth the secrecy and disclose the identity of the voters is not material

material for consideration is whether the secrecy of ballot was violated by the method prescribed. "Unwarranted disclosures after an election are not the same as breaches of secrecy whilst the election is taking place," (See Indian Election Cases 1935-51 by Sen & Poddar p. 497). However, considering the fact that the number of voters is small and also the fact that the election staff will generally be recruited from the University staff itself, the possibility of the secrecy being divulged would seem greater than in other elections and it would therefore be better if the University is advised not to number the ballot papers which practice is stated to be followed by the University of Bombay.

3. The next question for consideration is whether the members of the Senate were legally justified in approaching the Chancellor direct under section 60 of the Karnatak University Act, 1949. The provisions of section 60 of the Karnatak University Act, 1949, are different from those of section 60 of the Poona University Act, 1948. R.L.A.'s Opinion No. 544-Conf. dated 8th June 1951 has no application to the interpretation of section 60 of the Karnatak University Act. The provisions of the section appear to preclude a direct reference to the Chancellor. The provisions are similar to section 47 of the Bombay University Act, 1928. It is understood that under the latter Act all representations for the Chancellor's opinion are submitted through the Vice-Chancellor who is the chief executive officer of the University. There is no reason why the Karnatak University should not follow this well-settled practice of the Bombay University, which, it appears, is in conformity with the spirit and the letter of the legal provisions prescribed in this behalf. The view taken by the Vice-Chancellor on this point also is correct.

P.M.LAD.

9/4.

Remembrancer of Legal Affairs.

U.R. to E.D.; No. 5348. dated the 9th. April, 1952.